

United States  
Circuit Court of Appeals

For the Ninth Circuit.

MERCHANTS NATIONAL BANK OF SAN  
FRANCISCO, a Corporation,

Petitioner,

vs.

THE CONTINENTAL BUILDING AND LOAN  
ASSOCIATION, a Corporation, et al.,

Respondents.

In the Matter of CONTINENTAL BUILDING AND  
LOAN ASSOCIATION, Bankrupt.

Petition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved  
July 1, 1898, to Revise, in Matter of Law, of a  
Certain Order of the United States District  
Court for the Northern District  
of California, First  
Division.

Filed

JAN 13 1916

F. D. Monckton,  
Clerk.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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FRANCISCO, a Corporation,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

No. 2684.

In the Matter of CONTINENTAL BUILDING  
AND LOAN ASSOCIATION, In Bank-  
ruptcy.

**Petition to Revise in Matter of Law.**

To the Honorable, the Judges of the United States  
Circuit Court of Appeals, for the Ninth Circuit:

The petition of the Merchants National Bank of  
San Francisco, a corporation, respectfully shows:

I.

Said Merchants National Bank of San Francisco  
is a national banking corporation organized and ex-  
isting under and by virtue of the laws of the United  
States of America, and at all times herein mentioned  
was, and now is, engaged in a national banking busi-  
ness within the city and county of San Francisco,  
State of California.

II.

Heretofore, to wit, on the 9th day of August, 1915,  
the Continental Building and Loan Association was  
duly adjudged a bankrupt by an order of the Dis-  
trict Court of the United States, duly given and  
made on that date. On said day, the said Court duly  
gave and made an order referring all further pro-  
ceedings in said matter to the Honorable Armand B.  
Kreft, referee in bankruptcy, within said city and  
county of San Francisco, before whom all further  
proceedings herein have been had.

## III.

Ever since its organization, and at a time when the indebtedness hereinafter mentioned was incurred, the said Continental Building and Loan Association was, ever since has been, and it still is, a building and loan corporation, organized under the laws of part IV, title XVI, chapter — of the Civil Code of the State of California, for the purposes of conducting the business of a building and loan corporation, and ever since its incorporation, it has been conducting such business, and has conducted no other business.

## IV.

All of the persons, firms and corporations, who have filed creditors' claims against said bankrupt, except the petitioner, Merchants National Bank of San Francisco, and Pacific Gas and Electric Company, who filed a claim in the sum of \$2.90, and Grant Company, a corporation, who filed a claim in the sum of \$9,584.80, were, at the time of the creation of the indebtedness mentioned in their claims, ever since have been, and they still are, stockholders and members of said bankrupt corporation, owning and holding respectively shares of its capital stock.

## V.

At and before the filing of said petition in bankruptcy, said Continental Building and Loan Association was justly and truly indebted to your petitioner in the sum of \$2,511.20, for money loaned and advanced by Merchants National Bank of San Francisco to said Continental Building and Loan Association. Said Merchants National Bank of San Francisco has not received, nor has any person by



its order, for its use, had or received any manner of security for said debt whatever. A note has been received for a portion of said debt, to wit, \$2,500.00, but no judgment has been rendered thereon. Your petitioner owns an unsecured claim provable in bankruptcy against said bankrupt, and is a creditor of said bankrupt.

## VI.

On the 30th day of August, 1915, your petitioner filed herein its claim against said bankrupt in the sum of \$2,511.20, and attached thereto was the original note evidencing a portion of said indebtedness, to wit, \$2,500.00. Said claim was presented and filed on said date, and there was filed with said referee on said date, a proof of said claim, in due form, as required by law, duly verified by it, and that no objection or opposition was made to said proof of claim, and said claim was duly allowed and approved by said referee.

## VII.

At the time of filing said claim, your petitioner presented and filed therewith a letter of attorney, in due form, duly authenticated, authorizing and empowering its attorney, R. P. Henshall, to represent it at any and all meetings of creditors, and to vote for it and on its behalf for or against any proposal or resolution that might lawfully be made or passed at such or any meeting, and for the choice of a trustee or trustees of the estate of said bankrupt. No opposition or objection was ever made to said letter of attorney by anyone.

## VIII.

On the 15th day of September, 1915, the first meeting of creditors of said bankrupt was duly held in the office of said referee, in the Postoffice Building, in the city and county of San Francisco, as required by law, and at said time and place, an election of a trustee of the estate of said bankrupt was held. Your petitioner was present on said day, at said time and place, by its attorney and by its said proxy. At said time and place there were further present and represented, claims and claimants against said bankrupt, each and all of whom were, as hereinbefore alleged, stockholders and members of said bankrupt corporation, and not otherwise, and there was not present at said meeting any creditor in person or by proxy, except your petitioner and Pacific Gas and Electric Company and Grant Company, who was not a stockholder or a member of said bankrupt corporation, but said Pacific Gas and Electric Company and said Grant Company did not, on said 15th day of September, 1915, as your petitioner is informed and believes, and therefore alleges the fact to be, vote or attempt to vote on said date, either in person or by proxy.

## IX.

At said time and place, petitioner duly moved said referee for an order that no claimants, and that no person present or by proxy, or by attorney, be allowed to vote for trustee, except your petitioner, Merchants National Bank of San Francisco, and any other person, creditor of said bankrupt, holding a provable claim against said bankrupt, who was not

a member or stockholder of said bankrupt, on the ground then stated, that stockholders and members of said bankrupt who attempted to vote as creditors of said bankrupt, were not creditors having provable claims, within the meaning of the bankrupt act. And your petitioner at said time and place further moved that as there were no creditors of said bankrupt present in person or by proxy, or by attorney, who were not members or stockholders of said bankrupt corporation, other than your petitioner, that your petitioner be alone allowed to vote for the office of said trustee, and that all said other persons be refused and denied the right to vote.

Thereupon said referee denied and overruled the motion of your petitioner, to which said ruling the said petitioner then and there, by its attorney, duly excepted, and now excepts.

X.

Said petitioner further moved, at said time and place, that it be allowed to vote at any and all elections to be held for the office of trustee, and said referee then and there denied your petitioner the right to vote at said or any election, to which said ruling your petitioner herein then excepted, and now excepts.

XI.

Thereupon, and over the objection of your petitioner, the said referee permitted the other persons present, claiming to be creditors of said bankrupt, and who were members and stockholders thereof, and not otherwise, to vote for the election of the office of trustee.



## XII.

Thereafter and on the 29th day of September, 1915, your petitioner filed in said District Court his petition for a review of said order of the referee, which said petition came on for hearing, duly and regularly, before said District Court and was thereafter argued and submitted to said District Court. On the 9th day of November, 1915, the same order of the referee, so made as aforesaid, was by the said District Court affirmed. That accompanying said order was an opinion filed by the Judge of said District Court, giving the reasons for making said order, to which said opinion reference in that behalf is hereby made.

## XIII.

And your petitioner herein alleges that the said referee in making the said order and rulings, as aforesaid, in the said District Court, and the said District Court in affirming the order and decision of said referee in the premises aforesaid, erred in the following particulars as a matter of law, to wit:

1. Said referee and said District Court erred in holding that your petitioner was not the only creditor present who was entitled to vote for the office of trustee.

2. Said referee and said District Court erred in denying the motion of your petitioner that no other persons present, other than your petitioner, be allowed to vote for the office of trustee.

3. Said referee and said District Court erred in allowing persons claiming to be creditors of said bankrupt, who were stockholders and members

thereof, to vote for the office of trustee of said bankrupt corporation.

4. Said referee and said District Court erred in excluding your petitioner herein from its right to vote for the office of said trustee.

5. Said District Court erred in deciding that it was unnecessary to definitely determine at this time whether the shareholders of said Continental Building and Loan Association were creditors.

6. Said District Court erred in holding that the alleged bankrupt could, by naming its shareholders in its petition in voluntary bankruptcy, establish or create their status as creditors of the Association.

Therefore your petitioner contends that the said order of said District Court was erroneous in matter of law.

WHEREFORE, your petitioner, feeling grieved because of such order, asks that the same be revised in matter of law by the Honorable United States Circuit Court of Appeals, as provided in Section 24b of the Bankruptcy Act of the United States, and the rules and practices in such case made and provided.

MERCHANTS NATIONAL BANK OF  
SAN FRANCISCO.

By W. W. JONES,  
Cashier.

R. P. HENSHALL,  
Attorney for Petitioner.

State of California,  
City and County of San Francisco,—ss.

W. W. Jones, being first duly sworn, deposes and says:



That he is an officer, to wit, the cashier of the Merchants National Bank of San Francisco, petitioner in the above-entitled matter, and as such is authorized to make, and does make, this verification on behalf of said petitioner; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, that he believes it to be true.

W. W. JONES.

Subscribed and sworn to before me this 18th day of November, 1915.

[Seal] CHARLES R. HOLTON,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

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[Endorsed]: No. 2684. United States Circuit Court of Appeals for the Ninth Circuit. Merchants National Bank of San Francisco, a Corporation, Petitioner, vs. The Continental Building and Loan Association, a Corporation et al., Respondents. In the Matter of Continental Building and Loan Association, Bankrupt. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of a Certain Order of the United States District

Court for the Northern District of California, First Division.

Filed November 18, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals,  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

In the Matter of CONTINENTAL BUILDING  
& LOAN ASSOCIATION,

In Bankruptcy.

**Affidavit of Service [of Notice of Filing of Petition  
to Revise].**

United States of America,  
State of California,  
Northern District of California,—ss.

Lester Alexander, being first duly sworn, deposes  
and says:

That he is over the age of eighteen years, a citizen  
of the United States and not a party to the above-  
entitled action; that on the 20th day of November,  
1915, he personally served the annexed notice of the  
filing of petition to revise in matter of law upon R. G.  
Hunt, attorney at law, whose office is at No. 544 Mar-  
ket Street, in the city and county of San Francisco,  
and who appears as attorney for certain persons  
claiming to be creditors herein, by delivering and  
leaving a true copy of said petition in the said office

of said R. G. Hunt with the clerk in said R. G. Hunt's office, who was then an adult person over the age of eighteen years.

That on the 20th day of November, 1915, he personally served the annexed notice of the filing of petition to revise in matter of law upon J. S. Hutchinson, attorney at law, whose office is Room No. 923, First National Bank Building, in the city and county of San Francisco, and who appears as attorney for certain persons claiming to be creditors herein, by delivering and leaving a true copy of said petition in said office of said J. S. Hutchinson with the clerk in said J. S. Hutchinson's office, who was then an adult person over the age of eighteen years.

LESTER ALEXANDER.

Subscribed and sworn to before me this 3d day of December, 1915.

[Seal] CHARLES R. HOLTON,  
Notary Public in and for the City and County of San  
Francisco, State of California.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

No. 2684.

In the Matter of CONTINENTAL BUILDING &  
LOAN ASSOCIATION,  
In Bankruptcy.

**Affidavit of Service [of Notice of Filing of Petition  
to Revise].**

United States of America,  
State of California,  
Northern District of California,—ss.

Lester Alexander, being first duly sworn, deposes and says:

That he is over the age of eighteen years, a citizen of the United States and not a party to the above-entitled action; that on the 20th day of November, 1915, he personally served the annexed notice of the filing of petition to revise in matter of law upon W. C. Cavitt, attorney-at-law, whose office is at Room 422, Rialto Building, in the City and County of San Francisco, and who appears as attorney for certain persons claiming to be creditors herein; that there was no one in the office of said W. C. Cavitt at the time affiant left said copy of said petition and that affiant left the same on a chair in said office in a conspicuous place therein between the hours of ten o'clock A. M. and five o'clock P. M. of said day; that since said day affiant has talked with the said W. C. Cavitt, who has admitted that he has received copy of said petition.

LESTER ALEXANDER.

Subscribed and sworn to before me this 3d day of December, 1915.

[Seal] CHARLES R. HOLTON,  
Notary Public in and for the City and County of San  
Francisco, State of California.



[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Continental Building & Loan Association, in Bankruptcy. Affidavits of Service.

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*In the United States Circuit Court of Appeals, for  
the Ninth Circuit.*

In the Matter of CONTINENTAL BUILDING &  
LOAN ASSOCIATION,

In Bankruptcy.

**Notice of Filing of Petition to Revise in Matter of  
Law.**

To Continental Building & Loan Association, and  
Nat Schmulowitz, Its Attorney:

To George W. Mordecái, in *pro. per.* and Appearing  
for James McCullough;

To R. G. Hunt, Attorney for Certain Persons Claim-  
ing to be Creditors;

To W. C. Cavitt, Attorney for Certain Persons  
Claiming to be Creditors;

To W. D. Mansfield, Attorney for Certain Persons  
Claiming to be Creditors;

To J. S. Hutchinson, Attorney for Certain Persons  
Claiming to be Creditors;

To J. G. de Forest, Attorney for Certain Persons  
Claiming to be Creditors;

To B. M. Aikins, Attorney for Claimants Wilson  
et al.;

To Sidney M. Ehrman, Attorney for Certain Persons  
Claiming to be Creditors; and

To John Yule, Attorney for Certain Persons Claim-  
ing to be Creditors:



YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that a petition to revise in matter of law the order of the Disrtict Court of the United States, for the Northern District of California, First Division, given and made on the 9th day of November, 1915, in and by which order said District Court affirmed an order and ruling of the referee, theretofore made, denying the motion and application of the Merchants' National Bank of San Francisco, a creditor of said bankrupt, for an order that all of the stockholders, claiming to be creditors of said Continental Building and Loan Association, be excluded from the right to vote for the office of trustee herein upon the ground that they were not creditors within the meaning of the bankruptcy act and that said Merchants' National Bank of San Francisco alone be allowed the right to vote for the office of such trustee, was filed and presented in the clerk's office of the United States Circuit Court of Appeals, for the Ninth Circuit, on the 18th day of November, 1915, a copy of which is herewith served upon you, and docketed No. 2684 on the records of said court; that the record in said cause will be prepared and filed in said court, as required by the rules and practice of said court and that the same will thereafter be printed, and a copy furnished you.

Dated this 19th day of November, 1915.

R. P. HENSHALL,  
Attorney for Petitioner, Merchants' National Bank  
of San Francisco.

RECEIVED from R. P. Henshall, attorney for  
Merchants' National Bank of San Francisco, peti-

tioner herein, notice of filing and presentment of petition for revision in matter of law herein, together with copy of said petition, this 20th day of November, 1915.

NAT SCHMULOWITZ,  
Attorney for Continental Building and Loan Association, Bankrupt.

GEORGE W. MORDECAI,  
Attorney in *pro. per.* and Appearing for James McCullough.

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Attorney for Certain Persons Claiming to be Creditors.

SIDNEY M. EHRMAN,  
Attorney for Certain Persons Claiming to be Creditors.

WALTER D. MANSFIELD,  
Attorney for Certain Persons Claiming to be Creditors.

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Attorney for Certain Persons Claiming to be Creditors.

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Attorney for Certain Persons Claiming to be Creditors.

B. M. AIKINS,  
Attorney for Certain Claimants Wilson et al.

J. G. DeFOREST,  
Attorney for Certain Persons Claiming to be Creditors.

JOHN YULE,

Attorney for Certain Persons Claiming to be  
Creditors.

H. D. NEWHOUSE,

Attorney for Certain Persons Claiming to be  
Creditors.

[Endorsed]: No. 2684. United States Circuit  
Court of Appeals for the Ninth Circuit. In the  
Matter of Continental Building and Loan Associa-  
tion, In Bankruptcy. Notice of Filing of Petition to  
Revise in Matter of Law. Original. Filed Dec. 3,  
1915. F. D. Monckton, Clerk.



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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In the Matter of CONTINENTAL BUILDING AND  
LOAN ASSOCIATION, Bankrupt.

MERCHANTS NATIONAL BANK OF SAN  
FRANCISCO, a Corporation,  
Appellant,

vs.

THE CONTINENTAL BUILDING AND LOAN  
ASSOCIATION, a Corporation, et al.,  
Appellees.

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**Transcript of Record.**

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Upon Appeal from the United States District Court for the Northern  
District of California, First Division,

and

In Support of a Petition for Revision Under Section 24b of the  
Bankruptcy Act of Congress, Approved July 1, 1898,  
to Revise, in Matter of Law, an Order of  
Said District Court.

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**[Names and Addresses of Attorneys.]**

*In the District Court of the United States, for the  
Northern District of California, First Division.*

No. 9509.

In the Matter of CONTINENTAL BUILDING AND  
LOAN ASSOCIATION, a Corporation,  
In Bankruptcy,

R. P. HENSHALL, Esq., Attorney for Merchants'  
National Bank, Appellant Herein.

R. G. HUNT, Esq., HUGO D. NEWHOUSE, Esq.,  
et al., Attorneys for Certain Creditors, Appellees  
Herein.

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*In the District Court of the United States, Northern  
District of California, First Division.*

In the Matter of CONTINENTAL BUILDING AND  
LOAN ASSOCIATION,

In Bankruptcy,

**Appellant's Praecipe [for Transcript of Record].**

To W. B. Maling, Esq., Clerk of Said Court:

Please issue and make up a record in the above-entitled matter, containing the following papers:

1. Petition of Merchants' National Bank of San Francisco to Review Order of Referee;
2. Statement of facts prepared by Referee and transmitted to said District Court on said Petition of said Merchants' National Bank of San Francisco.
3. Order of said District Court affirming Order of Referee.

4. Opinion of District Court given upon such affirmations.
5. Petition for appeal by Merchants' National Bank of San Francisco from said Order and Order allowing appeal.
6. Assignment of Errors.
7. Bond on Appeal.
8. Order extending time to prepare record on Petition for Review and on Appeal to December 1st, 1915.
9. Citation.

The record on the Petition for Review and on the Appeal may be embraced in one transcript and will be so printed in the United States Circuit Court of Appeals.

DATED this 26th day of November, 1915.

R. P. HENSHALL,

Attorney for Merchants' National Bank of San Francisco.

[Endorsed]: Filed Nov. 26, 1915, at 2 o'clock and — Min P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1\*]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 9509—IN BANKRUPTCY.

In the Matter of CONTINENTAL BUILDING & LOAN ASSOCIATION, a Corporation,  
Bankrupt.

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\*Page-number appearing at foot of page of original certified Record.

**Appellees' Praecipe [to Include Additional Portions  
of Record in Transcript].**

To the Clerk of the Above-entitled Court:

You are hereby requested, in accordance with Rule No. 75a of the Rules of Practice for the Courts of Equity of the United States promulgated by the Supreme Court of the United States on November 4, 1912, by the undersigned George P. Dillman, one of the appellees on the appeal and petition to revise heretofore taken by the Merchants' National Bank of San Francisco, a corporation, from the order of the above-entitled court made herein on the 9th day of November, 1915, refusing the said corporation the exclusive right to vote for trustee in bankruptcy; to include the following additional portions of the record in the transcript:

(1) Referee's certificate on petition to review his order made September 15, 1915, denying the Merchants' National Bank of San Francisco, a corporation, the exclusive right to vote for trustee in bankruptcy.

(2) Page 13 commencing with the words "A second Petition to review another order herein," and pages 14 and 15 of [2] the referee's certificate on petition to review his order made on the 15th day of September, 1915, disapproving the election of the Anglo California Trust Company as the trustee of the estate of the bankrupt.

(3) Certified copy of the by-laws of the Continental Building & Loan Association.

Dated December 13th, 1915.

HUGO D. NEWHOUSE,  
Attorney for George P. Dillman, One of the Ap-  
pellees Herein.

Receipt of a copy of the foregoing appellee's  
praecipe is hereby admitted this 13th day of Decem-  
ber, 1915.

R. P. HENSHALL,  
Attorney for Merchants' National Bank of San Fran-  
cisco, a Corporation.

[Endorsed]: Filed Dec. 14, 1915, at 2 o'clock P. M.  
W. B. Maling, Clerk. By C. W. Calbreath, Deputy  
Clerk. [3]

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*In the District Court of the United States, in and for  
the Northern District of California, First Di-  
vision.*

No. 9509.

In the Matter of CONTINENTAL BUILDING  
AND LOAN ASSOCIATION, in Bank-  
ruptcy.

**Petition of Merchants National Bank of San  
Francisco.**

To the Honorable M. T. DOOLING, Judge of the  
District Court of the United States, Northern  
District of California, First, Division, and to the  
Honorable ARMAND B. KREFT, Referee:

The petition of Merchants National Bank of San  
Francisco, a creditor of the above-named bankrupt,  
of the city and county of San Francisco, State of  
California, respectfully shows:



I.

Said Merchants National Bank of San Francisco is a national banking corporation organized and existing under and by virtue of the laws of the United States of America, and at all times herein mentioned was, and now is, engaged in a national banking business within the city and county of San Francisco, State of California.

II.

Heretofore, to wit, on the 9th day of August, 1915, the Continental Building and Loan Association was duly adjudged a bankrupt by an order of the above-entitled court, duly given and made on that date. On said day, the said Court duly gave and made an order referring all further proceedings in said matter to the Honorable Armand B. Kreft, referee in bankruptcy, within said city and county of San Francisco, before whom all further proceedings herein have been had. [4]

III.

Ever since its organization, and at a time when the indebtedness hereinafter mentioned was incurred, the said Continental Building and Loan Association was, ever since has been, and it still is, a building and loan corporation, organized under the laws of part —, title —, chapter —, of the Civil Code of the State of California, for the purposes of conducting the business of a building and loan corporation, and ever since its incorporation, it has been conducting such business, and has conducted no other business.

IV.

All of the persons, firms and corporations who

have filed creditors' claims against said bankrupt, except the petitioner Merchants National Bank of San Francisco, and Pacific Gas and Electric Company, who filed a claim in the sum of \$2.90, and Grant Company, a corporation, who filed a claim in the sum of \$9,584.80, were, at the time of the creation of the indebtedness mentioned in their claims, ever since have been, and they still are, stockholders and members of said bankrupt corporation, owning and holding respectively shares of its capital stock.

#### V.

At and before the filing of said petition in bankruptcy, said Continental Building and Loan Association was justly and truly indebted to your petitioner in the sum of \$2,511.20, for money loaned and advanced by Merchants National Bank of San Francisco to said Continental Building and Loan Association. Said Merchants National Bank of San Francisco has not received, nor has any person by its order, for its use, had or received any manner of security for said debt whatever. A note has been received for a portion of said debt, to wit, \$2,500, but no judgment has been rendered thereon. Your petitioner owns an unsecured claim provable in bankruptcy against said bankrupt, and is a creditor of said bankrupt. [5]

#### VI.

On the 30th day of August, 1915, your petitioner filed herein its claim against said bankrupt in the sum of \$2,511.20, and attached thereto was the original note evidencing a portion of said indebtedness, to wit, \$2,500. Said claim was presented and filed

on said date, and there was filed with said referee on said date, a proof of said claim, in due form, as required by law, duly verified by it, and that no objection or opposition was made to said proof of claim, and said claim was duly allowed and approved by said referee.

## VII.

At the time of filing said claim, your petitioner presented and filed therewith a letter of attorney, in due form, duly authenticated, authorizing and empowering its attorney, R. P. Henshall, to represent it at any and all meetings of creditors, and to vote for it and on its behalf for or against any proposal or resolution that might lawfully be made or passed at such or any meeting, and for the choice of a trustee or trustees of the estate of said bankrupt. No opposition or objection was ever made to said letter of attorney by anyone.

## VIII.

On the 15th day of September, 1915, the first meeting of creditors of said bankrupt was duly held in the office of said referee, in the Postoffice Building, in the city and county of San Francisco, as required by law, and at said time and place, an election of a trustee of the estate of said bankrupt was held. Your petitioner was present on said day, at said time and place, by its attorney and by its said proxy. At said time and place there were further present and represented, claims and claimants against said bankrupt, each and all of whom were, as hereinbefore [6] alleged, stockholders and members of said bankrupt corporation, and not otherwise, and there



was not present at said meeting any creditor in person or by proxy, except your petitioner and Pacific Gas and Electric Company and Grant Company, who was not a stockholder or a member of said bankrupt corporation, but said Pacific Gas and Electric Company and said Grant Company did not, on said 15th day of September, 1915, as your petitioner is informed and believes, and therefore alleges the fact to be, vote or attempt to vote on said date, either in person or by proxy.

### IX.

At said time and place, petitioner duly moved said referee for an order that no claimants, and that no person present or by proxy, or by attorney, be allowed to vote for trustee, except your petitioner Merchants National Bank of San Francisco, and any other person, creditor of said bankrupt, holding a provable claim against said bankrupt, who was not a member or stockholder of said bankrupt, on the ground then stated, that stockholders and members of said bankrupt who attempted to vote as creditors of said bankrupt, were not creditors having provable claims, within the meaning of the bankrupt act. And your petitioner at said time and place further moved that as there were no creditors of said bankrupt present in person or by proxy, or by attorney, who were not members or stockholders of said bankrupt corporation, other than your petitioner, that your petitioner be alone allowed to vote for the office of said trustee, and that all said other persons be refused and denied the right to vote.

Thereupon said referee denied and overruled the

motion of your petitioner, to which said ruling the said petitioner then and there, by its attorney, duly excepted, and now excepts. [7]

X.

Said petitioner further moved, at said time and place, that it be allowed to vote at any and all elections to be held for the office of trustee, and said referee then and there denied your petitioner the right to vote at said or any election, to which said ruling your petitioner herein then excepted, and now excepts.

XI.

Thereupon, and over the objection of your petitioner, the said referee permitted the other persons present, claiming to be creditors of said bankrupt, and who were members and stockholders thereof, and not otherwise, to vote for the election of the office of trustee.

XII.

Your petitioner further alleges that said referee in making said order and rulings, erred in the following particulars, to wit:

1. Said referee erred in holding that your petitioner was not the only creditor present who was entitled to vote for the office of trustee.

2. Said referee erred in denying the motion of your petitioner that no other persons present, other than your petitioner, be allowed to vote for the office of trustee.

3. Said referee erred in allowing persons claiming to be creditors of said bankrupt, who were stockholders and members thereof, to vote for the office of



trustee of said bankrupt corporation.

4. Said referee erred in excluding your petitioner herein from its right to vote for the office of said trustee. [8]

Wherefore, your petitioner prays this Honorable Court that it review the said order and rulings of the referee as aforesaid; that said referee certify the said questions to this Court for its decision; that said order denying the motion of said Merchants National Bank of San Francisco be disapproved, and that this Court make an order disallowing the right of any other person, other than your petitioner, to vote for the office of trustee, except any person creditor of said bankrupt, who is not a stockholder or member thereof.

R. P. HENSHALL,  
Attorney for Petitioner.

State of California,  
City and County of San Francisco,—ss.

W. W. Jones, being duly sworn, deposes and says: That he is an officer, to wit, the cashier, of Merchants National Bank of San Francisco, petitioner in the above-entitled matter, and as such is authorized to make, and does make, this verification on behalf of said petitioner; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and *believe*, and as to those matters, that he believes it to be true.

W. W. JONES.

Subscribed and sworn to before me this 27th day of September, 1915.

[Seal]

ELLA L. SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires June 28, 1919.

[Endorsed]: Filed Sep. 27, 1915, at 3 o'clock and 20 minutes P. M. A. B. Kreft, Referee in Bankruptcy. [9]

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**[Stipulation to Substitute Copy of Referee's Certificate in Record in Place of Original.]**

*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 9509—IN BANKRUPTCY.

In the Matter of CONTINENTAL BUILDING & LOAN ASSOCIATION, a Corporation,  
Bankrupt.

It is hereby stipulated and agreed by and between Merchants National Bank of San Francisco, a corporation, the appellant herein, and George P. Dillman, an appellee herein, that in making up the record on appeal and petition to revise herein by the said Merchants National Bank of San Francisco from the order of the above-entitled court made herein on the 9th day of November, 1915, denying the said Merchants National Bank of San Francisco the exclusive right to vote for trustee in bankruptcy, the clerk of the above-entitled court shall substitute in the place and stead of the original referee's cer-

tificate on petition to review his order made September 15, 1915, denying the said Merchants National Bank of San Francisco the right to vote on the election of trustee, the following copy thereof:

“(Title of Court and Cause.)

**Referee's Certificate on Petition to Review.**

To the Honorable MAURICE T. DOOLING, Judge  
of the District Court of the United States, in  
and for the Northern District of California:

The undersigned referee in *bankrupt*, to whom was referred the above-entitled matter, respectfully certifies and reports:

That on September 15, 1915, an order was made herein denying the Merchants' National Bank of San Francisco the right to vote on the election of trustee herein. On September 27, 1915, within the time extended by the referee, the Merchants National Bank of San Francisco, a creditor herein, feeling aggrieved by said order, filed a petition to review the same.

[10]

The contention of this claimant respecting the choice of a trustee is partially stated by me at pages 14 and 15 in my certificate of this date on the petition to review, taken by W. L. Wilson and others. Mr. Henshall, representing this creditor, stated that the claim of this creditor was entitled to priority over the claims of the stockholders herein.

Secured creditors or creditors entitled to priority are not entitled to participate in the election of a trustee except on the excess of their claims over the value of their securities or priorities. As this creditor claims priority in full for its claim, it has no



vote on the election of the trustee. (Sec. 57e Bankruptcy Act.)

When Mr. Henshall sought to vote the claim of this creditor for trustee I enquired of him whether this creditor intended to waive its claim of priority which Mr. Henshall had asserted at a previous session. Mr. Henshall replied that he did not intend to waive such claim of priority; whereupon he was denied the right to participate in the election.

The total indebtedness schedules by the bankrupt to stockholders is \$751,434.65. Creditors other than stockholders have been termed "outside creditors." The following mentioned claims have been filed for such creditors: Merchants National Bank of San Francisco, \$2,611.20; Grant Company, for rent of premises occupied by bankrupt, \$9,584.00; Pacific Gas & Electric Company, \$2.90; total, \$12,198.90. These claims are not scheduled by the bankrupt, being, as I am informed, inadvertently omitted. I am also informed that there are no other creditors of this class. The contention of this claimant is that such outside creditors are the only creditors entitled to name a trustee herein.

For reasons stated in my certificate on the review of Wilson et al., pages 14 and 15, I cannot agree with counsel that the stockholders have no standing herein as creditors; that the only persons entitled to name a trustee are so-called outside creditors, and that the members of the association who have paid moneys to the association in the form of dues upon their stock, which in this case comprises substantially all the indebtedness of the bankrupt, cannot be heard in the

matter of selecting a trustee to conduct the liquidation of the concern.

The order reviewed was an oral ruling of the referee, made at the time said claimant sought to vote its claim.

San Francisco, Sept. 30, 1915.

Respectfully submitted,

A. B. KREFT,

Referee in Bankruptcy."

Dated December 20th, 1915.

R. P. HENSHALL,

Attorney for Merchants National Bank of San Francisco.

HUGO D. NEWHOUSE,

Attorney for George P. Dillman.

[Endorsed]: Filed Dec. 21, 1915, at 10 o'clock and 30 min. A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [11]

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[Certificate of Referee on Petition to Review,  
Portion Taken by W. L. Wilson et al.]

PORTION OF REFEREE'S CERTIFICATE ON  
PETITION TO REVIEW, TAKEN BY W. L.  
WILSON et al.

A second petition to review another order herein has been filed by the Merchants National Bank of San Francisco, which is sent up under a separate certificate. The Merchants National Bank is an outside creditor, having a claim for \$2,611.20. It takes the position that as the stockholders are liable for the debts of the corporation, its claim is entitled



to priority, and must be paid in full. Its petition for review is based upon the proposition that the outside creditors alone are entitled to name the trustee; that stockholders of the bankrupt are disqualified. At the meeting of September 15th, counsel for the Merchants National Bank sought to vote this claim and to exclude all stockholders from participating in the election. In my opinion the taking of this petition to review emanates from the office of counsel for the bankrupt. It is represented by an attorney associated with the attorney for the bankrupt. In addition to said Merchants National Bank there are only two creditors who are not stockholders, and their claims amount to \$9,587.70.

Considering that the indebtedness to the stockholders as scheduled amounts to \$751,434.65, and that the assets which are scheduled at \$769,508.13, will, with the exception of the few outside creditors named, be distributed to the stockholders, I can have no patience with a creditor who is claiming the right to be paid in full and who attempts to take the administration of this estate upon a claim of \$2,611.20 out of the hands of [12] creditors representing \$751,434.75 upon a technicality of the kind presented. In my opinion this is a further attempt upon the part of officers of the Continental Building & Loan Association to control the administration of this estate.

An involuntary proceeding in bankruptcy was brought against the Continental Building & Loan Association in 1912 in this court, and an opposition was entered by it, and the case was referred to me to ascertain and report the facts and my conclusions

thereon. My report was filed on January 16, 1913, in which I found that the association was solvent and had not committed the acts of bankruptcy charged, and the proceeding was dismissed. In my report I considered at length the nature of associations of this character and the rights of the stockholders as creditors in the event of bankruptcy proceedings. I quote the following from page 19 of said report:

“There is no independent stock of this association. Its capital stock consists of the dues paid in by its members. The Land and Building Act as amended (Civil Code, section 634) reads: ‘The capital stock shall consist of the accumulated dues, together with the apportioned profits of the corporation.’ There is also a provision for the usual stockholders’ liability upon debts owing by the corporation to outside creditors.

“In what respect do the stockholders of such an association differ from the stockholders of ordinary commercial corporations?

“The case of *Towle vs. American Building, Loan and Investment Co.*, 61 Fed. 466, Grosscup, District Judge, is a leading case referred to by the courts.

“Concerning the nature of these corporations I quote the following from this decision:

“ ‘These associations are essentially corporate copartnerships. They have no function except to gather together, from small, stated contributions, sums large enough to justify loans. Their officers are the agents of every stockholder, and

whether a stockholder is creditor or debtor depends on whether he has exercised his privilege of borrowing money from the common fund. The insolvency of such an institution is *sui generis*. There can be, strictly speaking, no insolvency, for the only creditors are the stockholders by virtue of their stock. The so-called insolvency is such a condition of the affairs [13] of the association as reduces the available and collectible funds below the level of the amount of stock already paid in. The association is said to be insolvent when it cannot pay back to its stockholders the amount of their actual contributions, dollar for dollar. The association does not deal as a corporate entity with its borrowers as stranger. The by-laws determine who become borrowers, and the officers, who are agents of such borrowers, as well as of the remaining stockholders, in the transaction, simply execute these by-laws. None of the liabilities or maxims, therefore, which apply to contracts between strangers are applicable to these transactions. The transaction of borrowing is not between strangers, or the result of contract or dealing, but is simply the execution of pre-existing rights among the stockholders. I think it plain that, when the condition of the association shows that, instead of making profits, it loses the principal of the contributing stockholders, there is power in a court of equity to wind up its affairs upon purely equitable principles.

“ ‘The inability of the association to proceed



to its expected termination by reason of the impairment of its collectible loans is attributable alike to each stockholder. The officers of the association are their agents, and the results of their investments are alike the fortune or misfortune of each stockholder, whether it be borrower or nonborrower. When a condition thus brought about justifies a court of equity in peremptorily terminating the career of the association, the adjustment should be made as near upon the line of what would take place if the association lived out its life as is possible.'

"I also quote from page 22 of said report as follows:

" 'But there is another principle of these associations to be considered, and out of which a condition of insolvency may arise, peculiar to such associations, and that is the right given by law to every member to withdraw from the association and receive such an amount of what he has paid in, and profits earned, less penalties for withdrawal, provided by law. The right of withdrawal is absolute. While by virtue of his membership he is liable for the debts of the corporation to outside creditors in the proportion represented by his stock, as between the association and himself, the association cannot compel him to complete his stock subscription. There is, therefore, an absolute obligation on the part of the association to pay all members such withdrawal value, and this establishes a condition of debtor and creditor.'

“I also quote from page 23 of said report as follows:

“ ‘To the extent of the obligation of the corporation to pay the withdrawal value of the stock based upon profits actually existing the identity of the corporation is distinguished from that of its members. If the corporation is solvent they can in law or in equity recover such withdrawal value. If the corporation is unable [14] to pay back the principal paid in a state of insolvency exists. In the opinion of the referee the stockholders have provable claims in bankruptcy to this extent, and are entitled to their proportionate share of the profits, if any.’ ” [15]

**By-laws of the Continental Building and Loan Association.**

Authorized Capital \$20,000,000.00

**BY-LAWS**

**CONTINENTAL BUILDING AND LOAN ASSOCIATION OF CALIFORNIA**

**“HOME”**

Incorporated and Acting Under the Laws of the State of California.

Home Office:

San Francisco, Cal. [16]

Home Office:

Market and Church Sts.

San Francisco

Telephone Special 118

**CONTINENTAL BUILDING AND LOAN ASSOCIATION OF CALIFORNIA**

**BY-LAWS [17]**



BY-LAWS  
CONTINENTAL BUILDING AND LOAN ASSO-  
CIATION.

Home Office, San Francisco, Cal.

ARTICLE I.

Section 1. The name of this Association shall be the Continental Building and Loan Association, and its principal office shall be in the City and County of San Francisco, State of California.

ARTICLE II.

Section 1. The objects of this Association are to encourage industry and frugality, and to promote thrift and economy among its members by providing a medium through which their savings may be invested to yield the largest returns consistent with absolute safety. [18]

ARTICLE III.

Section 1. Any person may become a member of this Association by subscribing for stock therein and making the first payment of \$1.00 on each share, which shall be for a life membership in the Association, and is transferable at any time on the books of the Association by the payment of a transfer fee of ten cents per share; provided that such application for membership or transfer is made upon blanks furnished by the Association, and is approved by the Board of Directors.

Sec. 2. Corporations and minors may become members and hold stock in the name of a trustee. Married women may hold stock free from all claims and debts of their husbands.

## ARTICLE IV.

Section 1. The affairs of this Association shall be managed and controlled by a Board of five Directors, who shall hold their offices until their successors are duly elected and qualified, and shall fill any vacancies that may exist in the Board. The regular meetings of the Board of Directors shall be held at 11:30 o'clock a. m. every Saturday, at the office of the Association in San Francisco. A majority of the Board of Directors shall constitute a quorum for the transaction of business.

Sec. 2. The Directors shall elect and appoint all officers of the Association and elect the bank or banks, trustt company or trust companies in which all funds, deeds, mortgages, bonds and other papers shall be deposited. They shall audit the accounts of the Secretary and claims or bills against the Association, and shall have access to the books of the Association at all times. All bills certified by them as correct shall be paid without further action when signed by the President and attested by the Secretary.

Sec. 3. The Board of Directors shall have the power to borrow money and secure the payment thereof as they may deem best, said money to bear interest at a rate not exceeding the usual market rate. All profit derived from such borrowed capital shall be treated as earnings to the Classes "A," "F" and "G" Installment and Children's Educational stock.

## ARTICLE V.

Section 1. The elective officers of the Association

shall consist of a President, Vice-President, Secretary and General Manager.

Sec. 2. The President shall preside at all [19] meetings of the Directors, shall sign certificates of stock and orders on the Trustee, and perform such other duties as usually devolve upon the President of a corporation.

Sec. 3. The Vice-President shall perform all duties of the President during his absence.

Sec. 4. The Secretary shall keep correct minutes of the proceedings of the stockholders and the Board of Directors. He shall attest all certificates of stock and all orders drawn upon the Trustee or depositary for the payment or appropriation of money ordered by the Board. He shall keep the accounts and all necessary books and papers of the Association, except those in charge of the Trustee. He shall attend to the general correspondence of the Company, and shall have charge of the corporate seal. He shall make a report to the Board of Directors when so required, showing the condition of the Association. He shall have general control and charge of the Association, and shall designate the duties of the employees, subject to the supervision of the Board of Directors.

Sec. 5. The Association shall have a depositary and Trustee. All moneys belonging to the Association shall be deposited with the depositary. The funds shall be withdrawn only on resolution of the Board of Directors for the following purposes only: Payment on account of loans, payment on account of matured, withdrawn or retired shares, pay-



ment of principal and interest on moneys borrowed, payments of interest on paid-up shares, payment of interest on deposits, payments of taxes, payments of purchase price on foreclosure of property mortgaged, or payments for necessary repairs or improvements on property acquired on foreclosure, and the operating expense of the Association. The Trustee shall have charge of all deeds, bonds, notes, mortgages, deeds of trust, contracts and other securities belonging to the Association, and shall register all paid-up stock certificates, and shall act as Trustee under all trust deeds made to the Association to secure money loaned.

Sec. 6. The General Manager shall have general supervision of the Agency Department, and shall give his entire time and attention to the general welfare of the Association. He shall, when required, make a report to the Board of Directors, in writing or otherwise, showing the work done or being done in his department. It shall also be his duty to visit any or all parts of the territory in which the Association operates, as often as the Directors may deem it necessary to protect the interests of the Association.

[20]

Sec. 7. The Attorneys for the Association shall supervise the examination of all abstracts relating to the real estate offered as security for loans, and shall supervise and inspect the drawing of all papers relating to loans, and see that the same are properly recorded.

## ARTICLE VI.

Section 1. The stock of the Association shall be

divided into eight classes, viz.:

Class "A," Installment stock.

Class "C," Full Paid Non-Participating stock.

Class "D," Mutual Deposit stock.

Class "E," Children's Educational stock.

Class "F," Installment stock.

Class "G," Installment stock.

Class "I," Installment Protected stock.

Class "D C," Guaranteed Maturity stock.

All of the par value of \$100 each.

Sec. 2. Each holder of Class "A" Installment stock shall pay to this Association in advance without notice, on or before the 15th day of each and every month, a monthly installment of sixty cents on each share of said stock held by him or her, for a period not to exceed eighty-four consecutive months, and only until such stock shall by the accumulation of payments and profits become full paid. For the purpose of paying the operating expenses of the Association, there shall be set aside the first payment, and each month the further sum of one-tenth of one per cent on the face of stock then in force. The balance of said fund remaining after providing for the expense of management of the Association shall be transferred to the Loan Fund and be treated as profits.

Sec. 3. Class "D C," or Definite Contract, stock may be issued to borrowers only. In no case shall such stock remain in force after repayment of a loan for which the stock was issued.

Sec. 4. Full paid Non-Participating stock may be issued and sold at par (\$100 per share). The hold-



ers of such stock shall receive a dividend of six per cent per annum, payable semi-annually in cash the first day of January and first day of July of each year, but shall not further participate in the profits. Interest on such stock shall begin the day of the deposit.

Sec. 5. Mutual Deposit stock may be issued to any member of the Association desiring to open a bank account with his own institution; a deposit and check book shall [21] be issued to each member carrying this class of stock.

Sec. 6. Children's Educational stock may be issued by the Association for the purpose of creating a fund for parents or guardians to educate children, or for the purpose of starting them in business. Each holder of Children's Educational stock shall pay in advance to the Association, on or before the 15th day of each and every month, without notice, a monthly installment of sixty cents per share for each share of stock held, for a period not to exceed eighty-four consecutive months. When the stock shall, by the monthly payments and accumulations, become worth one hundred dollars per share, it shall be transferred to Full Paid Participating stock, and thereafter be subject to the by-laws governing Full Paid Participating stock, except that the interest paid in cash semi-annually to holders of Full Paid Participating stock shall be added to the principal and semi-annually compounded, and shall not be withdrawable until the expiration of the time specified in the original certificate of membership. In case the benefactor should desire to cease making

payments on the stock before the expiration of eighty-four months, a written notice of such desire will be deemed sufficient evidence for the Board of Directors not to demand further payments, and no fines shall be exacted after such notice shall have been received, but the fund already created shall be held by the Association in trust until the expiration of the trust agreed upon at the time of subscribing for the stock, when the capital paid in, together with its accumulations, shall be turned over to the proper parties. In case of the death of the beneficiary before the expiration of the agreed trust, it shall be left to the option of the benefactor whether the trust shall terminate or continue. If withdrawn in case of death, the benefactor shall be entitled to the monthly installments paid in, under the same rules that govern Class "A" withdrawals, per Section 11 of this Article. The operating expense that applies to Classes "A" and "B" stock shall also be applicable to this stock. This class of stock shall also be subject to the same charge for expense that governs Classes "A" and "B" stock.

Sec. 7. Each holder of Class "F" stock shall pay into the Association in advance, without notice, on or before the 15th day of each and every month, an installment of one dollar for each and every share of stock so held. Holders of this class of stock can make [22] payments of fifty cents dues per month on each share held if they so elect at the time of subscribing for the stock. For the purpose of paying the operating expenses, there will be charged against this class of stock the first payment of one

dollar per share; the other expenses attached to this class of stock shall be deducted from the earnings of said class of stock. The dividend to be apportioned to this class of stock shall be fixed from time to time by the Board of Directors. Holders of Class "F" stock desiring to borrow on real estate may do so by transferring their Class "F" stock to "D C" stock.

Sec. 8. Each holder of Class "G" Installment stock shall pay into the Association in advance, without notice, on or before the 15th day of each and every month, dues of thirty cents on each share of stock, so held, for a period not to exceed one hundred and twenty consecutive months. For the purpose of paying the operating expenses of the Association, there shall be set aside the first payment and each month the further sum of one-sixteenth of one per cent on the face of such stock in force.

Sec. 9. If in any event, at the expiration of eighty-four months, the payments and accumulations on Class "A" Installments stock do not amount to the face thereof, the same may be surrendered, and the holder thereof shall receive the full amount paid in on the stock, together with the net accumulations, or may leave the same with the Association until sufficient profits accrue to make the stock worth par. In no case shall expense be charged against such stock after eighty-four monthly installments have been paid.

Sec. 10. The holder of either class, except Children's Educational and Class "A" stock, may exchange it at its cash value for stock of either of the



other classes at any time, upon the payment of a transfer fee of \$1.00. Holders of Class "A" and Class "F" stock may reduce their shares at any time after six consecutive monthly payments upon paying a reduction fee of \$1.00.

Sec. 11. All stock shall be absolutely nonforfeitable; any member holding Class "A" stock, and desiring to withdraw from the Association, may do so at any time after making twelve consecutive monthly payments by giving sixty days' notice in writing to the Secretary. The member withdrawing before twenty-four consecutive monthly payments have been made upon his stock shall receive in cash the aggregate sum of such installments, [23] together with six per cent interest, less the expenses per Section 2 of Article 6; after twenty-four installments, the aggregate sum of such installments paid, together with three-fourths of the profits credited thereto, less the expenses per Section 2 of Article 6.

Sec. 12. Full Paid Participating stock may be withdrawn at any dividend date by first giving the Secretary of the Association sixty days' notice in writing of the intention so to do, but if withdrawn before the expiration of one year from date of issue the holder shall receive only the amount paid for same plus the interest collected. If the stock remains with the Association for two years, additional profits, to be fixed by the Board of Directors, may at their discretion be paid on withdrawal; but in no case will the full earnings of the stock be paid on withdrawal unless such stock is withdrawn because of maturity.



Sec. 13. Full Paid Non-Participating stock may be withdrawn after one year on any dividend date by giving the Secretary of the Association sixty days' notice of intention so to do, and the full amount paid for such stock plus six per cent interest to date of such withdrawal shall be returned to such withdrawing member.

Sec. 14. Mutual deposit stock may be used by the members of the Association for depositing money and checking it out at will. Any sums remaining with the Association for a longer term than three months shall bear interest at the rate of five per cent per annum, or such rate as may be fixed by the Board of Directors from time to time, and shall apply to all existing deposits. An account closed between dividend periods shall receive interest up to the last dividend period.

Sec. 15. Children's Educational Stock Certificates will not be issued for a term less than seven years, nor for a longer term than twenty-one years, and may be withdrawn when the child is fifteen, eighteen or twenty-one years of age, as may be agreed at the time of assuming the trust. The amount paid in, plus all net accumulations, shall be returnable at the expiration of the stipulated term, and will be returnable in a lump sum or paid out as the funds may be needed, and the amount remaining with the Association shall bear the mutual deposit rate of interest.

Sec. 16. Holders of Class "F" stock may withdraw their monthly installments of dues at any time on sixty days' notice, but, if withdrawn before twelve consecutive monthly payments have been

made the withdrawal [24] value will be the amount actually paid in as dues. If withdrawn at the end of one year and twelve consecutive monthly payments have been made, the withdrawal value will be the dues paid in together with five per cent interest for the average time. If withdrawn at the expiration of twenty-four consecutive monthly payments of dues or at the end of any annual period thereafter up to and including the sixth consecutive year, the amount paid in as dues together with six per cent interest annually compounded will be the withdrawal value, After the sixth year and until the maturity of the stock the withdrawal value will be the amount of dues paid in together with three-fourths of the accrued profits which shall have been semi-annually apportioned. Each certificate of stock of this class issued shall have the withdrawal value as herein mentioned stamped on its face. In no case shall the first payment of one dollar per share be subject to withdrawal.

Sec. 17. Each holder of Class "G" Installment stock may have the privilege of withdrawal at any time after twelve consecutive monthly installments have been made, on such terms as may be specified from time to time by the Board of Directors. If, in any event, the dues and accumulations do not make this class of stock worth one hundred dollars per share in one hundred and twenty months, the holder at that time shall be entitled to all dues paid in, together with the accumulations, less the expense charged against the stock per Section 8 of this Article.

Sec. 18. In case of the death of a member his legal representatives may continue his stock or exercise the like power of withdrawal.

Sec. 19. Whenever any stockholder or depositor of this Association shall give the notice of withdrawal provided in these by-laws for withdrawing members, and at the end of the time of notice shall fail to withdraw the money represented by said stock or said deposit for a period of three days beyond the time of said notice, then and in that event said stockholder or depositor shall be deemed to have waived and withdrawn said notice of withdrawal and the Association shall treat said stock and said deposit as other stock and funds of the Association wherein no notice of withdrawal shall have been given, and said stockholder or depositor shall not be entitled to withdraw thereafter without giving a new notice of withdrawal as in the first instance. In case a person does not [25] withdraw his stock, he shall not lose any of his dividends provided payments are continued.

Sec. 20. All transfer fees and reduction fees received shall be treated as profits.

Sec. 21. Unless the Board of Directors shall otherwise expressly determine, not more than one-half of the regular monthly receipts shall be applied to paying withdrawals.

Sec. 22. Profits arising from the Full Paid Non-Participating Stock and the Mutual Deposit Stock, after paying the interest and expenses thereon, will be considered profits to the Class "A," "E," "F" and "G" Installment Stock, and shall be semi-annu-



ally added to those classes of stock as additional dividends.

Sec. 23. In case holders of Class "A" or "F" Investment stock should, through sickness, find it impossible to pay their monthly installments of dues, profits will not be added to such stock during such illness, but the holder must furnish the Board of Directors sufficient proof of such inability.

Sec. 24. The Board of Directors may in its discretion create a Reserve Fund from the profits of the Association to an amount not exceeding ten per cent of its real estate holdings.

Sec. 25. Holders of Installment stock may make advance payments on their stock, and, if for a period of six months or more, interest on such advance payments will be allowed at the rate of six per cent per annum for the average time.

Sec. 26. Class "I" stock may be issued to be governed by such rules as the Board of Directors may designate. This class of stock is intended as a combination with Life Insurance to enable the stockholder to mature the stock in case of death.

Sec. 27. Stockholders desiring to transfer their stock from other classes to the Class "I" stock may do so upon payment of one dollar per share transfer or membership fee, said fee being based on the number of Class "I" shares subscribed for, and same may be paid in cash by stockholders or charged against their stock as they may elect.

Sec. 28. A deduction from monthly dues will be made by the Association, which shall be regulated by the Board of Directors and will be called the



“Insurance Fund.” All moneys saved out of said fund, after paying the cost of insurance and expense attached thereto, shall be carried into a fund called “Insurance Reserve Fund,” said fund to be [26] annually credited to each stockholder in the Class “I” stock.

Sec. 29. The “Insurance Reserve Fund” shall not be subject to withdrawal except at maturity of stock.

Sec. 30. The amount paid into the Association, after providing for the Insurance Fund, shall be known as the “Investment Fund.” Said fund shall receive such dividends semi-annually as the Board of Directors may provide.

Sec. 31. Stockholders desiring to withdraw this class of stock may do so after twelve consecutive monthly payments, and shall receive the amount paid into the Investment Fund, together with 6 per cent interest; after forty-eight consecutive monthly payments, the Investment Fund and 50 per cent of the Investment Fund profits; and after sixty consecutive monthly payments, the Investment Fund and 75 per cent of the Investment Fund profits. In all cases less the first payment of \$1.00 per share and any charges that may be chargeable against said fund.

Sec. 32. When on account of extra hazard the Life Insurance Company, or Association, requires the applicant or this Association to sign a due-bill making the amount payable at death less than the face of the certificate of stock, or insurance, the amount agreed to be paid by the Insurance Company

shall be considered the matured value of the stock, and only the actual amount received by the Continental Building and Loan Association, from the insurance company or association, shall be paid to the beneficiaries.

Sec. 33. No Insurance Policy shall be considered delivered until the certificate and pass-book, with the words "This certificate is protected by Life Insurance" printed, stamped or written thereon, shall be actually delivered to the applicant for the combination protected investments, and a statement made by the applicant at the time of delivery that he or she is still in good health. The regular payments must be made on the stock and the applicant be in good standing, and, further, the applicant must have fully complied with the requirements of the Insurance Company.

Sec. 34. Any person subscribing for the Class "I" stock known as "Protected Investments" must be governed by the rules relating to the insurance that are imposed upon this Association by the Insurance Company in which it places the insurance. [27]

Sec. 35. In case of the death of a stockholder in the Class "I" stock the Association shall collect the insurance from the Insurance Company and apply the proceeds to the immediate maturity of the stock, and then pay same to the beneficiaries. The amount standing to the credit of said deceased stockholder on the Association's books, not already in the Insurance Reserve Fund, shall be transferred into the Insurance Reserve Fund for the benefit of the ma-

turing stockholders in Class "I" stock.

Sec. 36. If in case of lack of employment, or through sickness, the Class "I" stockholder finds it impossible to keep up his installments of dues, the Association will keep the insurance in force by applying the Investment Fund toward the payment of the insurance premiums so far as they will extend, at which time the Association's liability toward keeping the policy in force shall cease. But a stockholder can put himself in good standing at any time before final default by paying up all back payments due upon the stock.

Sec. 37. The borrowing members carrying the Class "I" stock, in order to shorten the time of maturity of their stock and repayment of their loans, may make excess payments over and above the regular monthly installments, for the purpose of assisting in paying the life insurance premiums, and in case of death the life insurance shall be applied toward the liquidating of their mortgage.

Sec. 38. All life insurance policies shall be kept in the vaults of the Association at its head office, in the City and County of San Francisco, California.

Sec. 39. In case Installment stockholders do not make their monthly payments when due, a fine may be imposed upon such stock as provided by the State laws of the State of California at the time of the issuance of said stock.

## ARTICLE VII.

### Funds—How Loaned.

Section 1. The funds of this Association shall be loaned each month on such securities as are ap-



proved by the Board of Directors.

Sec. 2. Any member in good standing may borrow an amount not to exceed eighty per cent of the total installments paid on their shares, assigning said shares to the Association as collateral security, and paying such interest as the Board of Directors may determine. [28]

Sec. 3. After three months' membership each holder of Class "A" and "G" Installment stock not in arrears shall be entitled to borrow of the Association a sum equal to the face value of the stock, on assigning their certificate of stock to the Association, which shall be secured by a first lien on real estate, as provided in Section 1 of this Article. In addition to the sixty cents monthly dues on Class "A" and thirty cents on Class "G" stock, such borrower shall pay in advance a maximum of fifty cents interest and a minimum of sixty cents premium, making his total monthly payments \$1.70 for each \$100 borrowed on Class "A" loans, and \$1.40 for each \$100 borrowed on Class "G" loans, provided, however, dues on Class "A" borrowed stock shall not be collectable for a period exceeding eighty-four consecutive months, and on Class "G" not exceeding one hundred and twenty consecutive months. But interest and premium must be paid until stock assigned as collateral security is fully matured. Members desiring to borrow before being a member three months may do so by making three months' payments of dues when desiring to make application for loan.

Sec. 4. Abstract of title must be furnished by



the borrowers, and they must pay the attorney's fees for the examination of the same and all costs incurred in perfecting the loan, recording the mortgage or trust deed, etc. The abstract, as well as other papers offered as evidence of title, shall be held by the Association until loan is repaid, and, if loan is not made, until all expense incurred by the Association in reference thereto is fully paid.

Sec. 5. The borrower may repay his loan at any time on giving thirty days' notice in writing to the Secretary of the Association, on such terms as the Board of Directors may determine.

Sec. 6. The Secretary must have all buildings insured on which mortgages or trust deeds are placed, for the benefit of the Association, against losses by fire, in some company to be approved by the Board of Directors, with loss made payable to the Association as its interest may appear. The cost of such insurance must be paid for by the borrower. All renewed insurance policies must be on file in the general office of the Association at least forty-eight hours before the expiration of the old policy.

Sec. 7. All applications for loans will be filed and acted upon in the order in which they are received. [29]

Sec. 8. The Association may loan its funds on the definite contract plan when the Board of Directors shall deem it to be to the best interest of the Association to do so. Such loans may be repaid at any time on such conditions as the Board of Directors may determine. Such borrowers may make partial

payments on loans, independent of the monthly, payments, and if in even hundreds of dollars, reductions in the monthly payments will be allowed. The consecutive monthly payments per thousand on definite contract loans shall be as follows:

\$26 per mo. per 1,000 maturing in 48 months.

\$22 per mo. per 1,000 maturing in 60 months.

\$19 per mo. per 1,000 maturing in 72 months.

\$17 per mo. per 1,000 maturing in 87 months.

\$16 per mo. per 1,000 maturing in 96 months.

\$15 per mo. per 1,000 maturing in 108 months.

\$14 per mo. per 1,000 maturing in 120 months.

\$13 per mo. per 1,000 maturing in 144 months.

\$12 per mo. per 1,000 maturing in 168 months.

These rules and rates may be modified at any time by the Board of Directors.

Should a member make default in monthly payments on definite contract loans, a penalty of one per cent per month shall be charged against such defaulted payments for each and every month that such default continues.

### ARTICLE VIII.

Section 1. The Board of Directors may in their discretion elect from among the stockholders of the Association an Advisory Board, consisting of three members, whose duty it shall be to counsel and advise with the Board of Directors, inspect the books of the Association at least twice a year, and submit a report of their investigations which shall be published for the benefit of the stockholders of the Association.

Sec. 2. Whenever a sufficient amount of stock

shall have been sold in any community or locality, the stockholders thereof may organize a local Board or Branch of this Association. The officers of the local Branch shall consist of a President, Secretary, Treasurer and not less than three Directors, whose duty shall be to receive and forward applications for membership, to encourage punctual payments of installments, and to advise with the Board of Directors concerning all loans and proposed loans in their locality, as well as the interests of the Association at large. They should correspond freely with the Home Office.

Sec. 3. The agents of the Association are authorized to appoint the first officers of the [30] Local Board, subject to the approval of the Home Office, who shall hold office for the term of one year.

Sec. 4. The Treasurer of the Local Board shall be deemed Treasurer of the stockholders of his locality, and not the agent of the Association.

Sec. 5. Local Boards may choose one or more of their members to visit the Home Office whenever they wish to examine into the conduct of the affairs of the Association.

#### Remittances.

Sec. 6. All remittances for monthly installments, interest and premium, shall be made direct to the Home Office of the Association and shall be deposited by it with the depositary, the Canadian Bank of Commerce, or such other depositary as may be selected by the Board of Directors.

#### Stockholders' Meeting.

Sec. 7. The regular meeting of the stockholders



for the election of the Board of Directors, and the transaction of such other business as may come before it, shall be held on the second Tuesday of August in each year at the Home Office of the Association. A representation of the majority of the stockholders in good standing shall be necessary for the transaction of business at any meeting of the stockholders. At such meetings representation by proxy duly appointed shall be allowed, but such proxies must be filed with the Secretary at least ten days before the annual meeting. The annual meeting of the stockholders shall be held just before the annual meeting of the Board of Directors. Notice of holding the regular meetings of stockholders and directors is hereby dispensed with.

#### ARTICLE IX.

Section 1. The President and Secretary shall sign all satisfaction of mortgages, which shall be sufficient evidence of release, and the Trustee shall, when requested by resolution of the Board of Directors, reconvey all real estate held by it as security for loans.

#### ARTICLE X.

Seal.

Section 1. The Company shall have a seal with the words "Continental Building and Loan Association of California," and the date of its incorporation, inscribed thereon. [31]

#### ARTICLE XI.

Section 1. These By-Laws may be amended, repealed or suspended at any time by a unanimous



vote of the Board of Directors elected at any regular or called meeting, but no charge shall be made diverting the Loan Fund of the Association from its present use.

## ARTICLES XII.

Section 1. These By-Laws shall apply only to stock sold after July 17, 1894.

[Endorsed]: Filed Aug. 30, 1915, 10 A. M. A. B. Kreft, Referee. [32]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 9509.

In the Matter of CONTINENTAL BUILDING &  
LOAN ASSOCIATION,

In Bankruptcy,

**Opinion and Order Affirming Order of Referee  
Disapproving Selection of Trustee.**

N. SCHMULOWITZ, Esq., Attorney for Petitioner.

The Continental Building and Loan Association was upon its own application adjudicated a bankrupt on August 9th, 1915. On August 30th, 1915, the creditors appeared by proxy before the referee for the purpose of electing a trustee. The trustee selected at that time was not approved by the referee and another election was held on September 15th 1915. At this election the Anglo-California Trust Company was chosen, but the selection was disapproved by the referee. The order disapproving this

selection has been brought here for review. There is also brought here for review the action of the referee in permitting the shareholders of the bankrupt to vote as creditors for the trustee, and the refusal of the referee to permit the Merchants National Bank, which has a claim against the bankrupt for money loaned to it, to select the trustee, as being the only creditor, within the meaning of the bankrupt act, that appeared and offered to vote at the meeting. The amount of the latter's claim is \$2,611.20, while the claims of the shareholders voting at this election aggregate \$522,437.50. The question as to whether the shareholders can be at the same time creditors is an interesting one, but under the peculiar circumstances of this case need not be definitely determined at this time. The adjudication was had upon the petition of [33] the corporation itself. The shareholders were named in the petition as creditors. If they are not creditors within the meaning of the bankrupt law, the corporation is not insolvent, as the only other claims amount to but \$12,198.90, while the assets of the corporation are scheduled at \$769,508.13. If therefore the shareholders are eliminated as creditors we have these vast assets with which to pay debts of \$12,198.90. No one interested has made any objection to the adjudication and so long as it stands, based on the theory that the shareholders are creditors, they must be regarded as creditors for all purposes. The Merchants National Bank will be paid in full, whatever happens to the shareholders' claims, and the order denying it the right to select the trustee is

affirmed. The selection of the Anglo-California Trust Company was disapproved by the referee, because he found that the selection had been influenced, if not brought about by the officers of the bankrupt, and the attorneys for the bankrupt. His action in so doing is affirmed.

November 9th, 1915.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Nov. 9, 1915, at 3 o'clock and 10 min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [34]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 9509.

In the Matter of CONTINENTAL BUILDING AND  
LOAN ASSOCIATION,

In Bankruptcy.

**Petition of Merchants National Bank of San  
Francisco for Appeal and Order Allowing  
Appeal.**

To the Honorable M. T. DOOLING, Judge of the  
District Court of the United States, Presiding  
in the Above-entitled Court:

Merchants National Bank of San Francisco, a corporation, petitioner who filed a petition in the above-entitled cause, praying for a reversal of the order of the referee herein, made on the 15th day of September, 1915, disallowing the petitioner all right to vote



for the office of trustee herein and denying the motion and application of your petitioner that it alone be allowed to vote for the office of trustee, and that all the shareholders and stockholders of said alleged bankrupt be disallowed the right to vote, feeling itself aggrieved by the order made and entered in this cause on the 9th day of November, 1915, in and by which order the said rulings and each of them, of said referee were approved and confirmed, does hereby appeal from said order of the above-entitled Court to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reason specified in the assignment of errors filed herein and does hereby respectfully pray that this, its petition, for said appeal, be allowed and that a transcript of the record, proceedings and papers, upon which said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit. And said petitioner, desiring to supersede any and all further proceedings in said cause, [35] hereby tenders a bond in such amount as the Court may require for such purpose and prays that with the allowance of said appeal a supersedeas issue.

DATED November 19th, 1915.

R. P. HENSHALL,

Attorney for Merchants National Bank of San Francisco.

On reading and filing the above petition of Merchants National Bank of San Francisco and the assignment of errors presented therewith, it is ORDERED that said appeal be allowed as prayed for and that said appeal shall operate as a supersedeas



and shall stay all further proceedings in said cause, upon the filing by said petitioner of a bond in the sum of \$30,000.00, with sufficient surety to be approved by this Court.

Done and dated in open court this 19 day of November, 1915.

M. T. DOOLING,  
District Judge.

[Endorsed]: Presented in Open Court and Filed Nov. 19, 1915, at 10 o'clock and 30 min. A. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk.  
[36]

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*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 9509.

In the Matter of CONTINENTAL BUILDING AND  
LOAN ASSOCIATION,

In Bankruptcy.

**Assignment of Errors.**

Now comes petitioner and appellant herein, Merchants National Bank of San Francisco, and files the following assignment of errors upon which it will reply upon its appeal from the order made by this Honorable Court on the 9th day of November, 1915, in the above-entitled cause, as follows:

I.

Said referee and said District Court erred in holding that your petitioner was not the only creditor present who was entitled to vote for the office of trustee.

## II.

Said referee and said District Court erred in denying the motion of your petitioner that no other persons present, other than your petitioner, be allowed to vote for the office of trustee.

## III.

Said referee and said District Court erred in allowing persons claiming to be creditors of said bankrupt, who were stockholders and members thereof, to vote for the office of trustee of said bankrupt corporation.

## IV.

Said referee and said District Court erred in excluding your petitioner herein from its right to vote for the office of said trustee. [37]

## V.

Said District Court erred in deciding that it was unnecessary to definitely determine at this time whether the shareholders of said Continental Building and Loan Association were creditors.

## VI.

Said District Court erred in holding that the alleged bankrupt could, by naming its shareholders in its petition in voluntary bankruptcy, establish or create their status as creditors of the Association.

WHEREFORE, by reason of the errors assigned, appellant prays that said order of November 9th, 1915, be reversed and that such further proceedings be had thereon according to law.

R. P. HENSHALL,

Attorney for Petitioner and Appellant Merchants  
National Bank of San Francisco.

[Endorsed]: Presented in open court and filed Nov. 19, 1915, at 10 o'clock and 30 Min. A. M. W. B. Maling Clerk. By Lyle S. Morris, Deputy Clerk.  
[38]

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*In the District Court of the United States, in and for the Northern District of California, First Division.*

No. 9509.

In the Matter of CONTINENTAL BUILDING &  
LOAN ASSOCIATION,

In Bankruptcy.

**Bond.**

KNOW ALL MEN BY THESE PRESENTS: That, Whereas, the Merchants' National Bank of San Francisco, a corporation has appealed to the United States Circuit Court of Appeals, for the Ninth Circuit from an order of the above-entitled court made and entered herein on the 9th day of November, 1915, refusing the said corporation the exclusive right to vote for trustee in bankruptcy; and,

WHEREAS, the said corporation desires, during the progress of the said appeal, to stay all proceedings in the above-entitled matter; and,

WHEREAS, the above-entitled court made an order herein on the 19th day of November, 1915, granting a stay of such proceedings providing the said Merchants' National Bank of San Francisco, a corporation, filed in the above-entitled matter, a bond approved by the above-entitled court in the sum of \$30,000;

NOW, THEREFORE, we, the said Merchants, National Bank of San Francisco, a corporation, as principal, and Illinois Surety Company, a corporation, as surety, in consideration of such stay of proceedings, and of the premises, jointly and severally undertake and promise that in case the said order be affirmed by the said Circuit Court of Appeals, or the said appeal be withdrawn or dismissed, we will pay all costs which may be awarded by the said Circuit Court of Appeals against said Merchants National Bank of San Francisco, a corporation, as such appellant, and all [39] damages that the above-named bankrupt and the estate of the bankrupt, and the creditors of the bankrupt, and the stockholders of the bankrupt, and the shareholders of the bankrupt, and each and all of said persons, may sustain by reason of the said appeal, such damages to be assessed by the above-entitled court and to be paid to such persons as the above-entitled court may direct, such costs and damages not to exceed the said sum of \$30,000.

IN WITNESS WHEREOF, the said Merchants National Bank of San Francisco, a corporation, and the said Illinois Surety Company, a corporation, have hereunto set their hands and affixed their seals by their respective officers duly authorized thereto



by their respective boards of directors, this 29th day of November, 1915.

MERCHANTS NATIONAL BANK OF SAN  
FRANCISCO,

By W. W. JONES,  
Its Cashier.

ILLINOIS SURETY COMPANY,  
By CHARLES T. HUGHES,  
Its Attorney in Fact. [Seal]

The foregoing Bond is approved. Let it be filed.

M. T. DOOLING,  
U. S. District Judge.

State of California,  
City and County of San Francisco,—ss.

On this 29th day of November in the year one thousand nine hundred and fifteen before me, R. H. Jones, a notary public in and for the said city and county, residing therein, duly commissioned and sworn personally appeared Charles T. Hughes known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Illinois Surety Company, and he acknowledged to me that he subscribed the name of Illinois Surety Company thereto as principal and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco the day and year in this certificate first above written.

[Seal] R. H. JONES,  
Notary Public, in and for the City and County of  
San Francisco, State of California.  
My commission expires Dec. 20, 1917.

[Endorsed]: Filed Dec. 6, 1915, at 11 o'clock and — Min. A. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [40]

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**[Certificate of Clerk U. S. District Court to Transcript of Record.]**

I, Walter B. Maling, clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing 40 pages, numbered from 1 to 40, inclusive, contain a full, true and correct Transcript of certain records and proceedings, in the Matter of Continental Building & Loan Association, in Bankruptcy, Number 9509, as the same now remain on file and of record in the office of the clerk of said District Court; said Transcript having been prepared pursuant to and in accordance with appellant's and appellee's praecipes (copies of which are embodied in this transcript), and the instructions of attorney for appellant herein.

I further certify that the costs for preparing and certifying the forgoing transcript on appeal is the sum of Twenty-Two Dollars and Sixty Cents (\$22.60), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the original citation on appeal, issued herein (page 42).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 24th day of December, A. D. 1915.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled  
12/24/15. C. W. C.] [41]

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**Citation on Appeal.**

UNITED STATES OF AMERICA,—ss.

The President of the United States,

To CONTINENTAL BUILDING & LOAN  
ASSOCIATION, and NAT SCHMULO-  
WITZ, its Attorney,

To GEORGE W. MORDECAI, in *pro. per.* and  
Appearing for JAMES McCULLOUGH,

To R. G. HUNT, Attorney for Certain Persons  
Claiming to be Creditors,

To W. C. CAVITT, Attorney for Certain Per-  
sons Claiming to be Creditors,

To W. D. MANSFIELD, Attorney for Certain  
Persons Claiming to be Creditors,

To J. S. HUTCHINSON, Attorney for Certain  
Persons Claiming to be Creditors,

To J. G. de FOREST, Attorney for Certain  
Persons Claiming to be Creditors,

To B. M. AIKINS, Attorney for Claimants  
WILSON, et al,

To SIDNEY M. EHRMAN, Attorney for Cer-  
tain Persons Claiming to be Creditors,

To HUGO D. NEWHOUSE, Attorney for Certain Persons Claiming to be Creditors,  
To JOHN YULE, Attorney for Certain Persons Claiming to be Creditors, and  
To Each and All Other Persons and Stockholders, Claiming to be Creditors herein,  
GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal entered of record in the clerk's office of the United States District Court for the [42] Northern District of California on November 19, 1915, wherein Merchants National Bank of San Francisco, a corporation, who filed a petition in the matter of Continental Building and Loan Association, a corporation, bankrupt, pending in said court, for an order permitting it to vote for the office of trustee and disallowing the right of all shareholders of said Continental Building and Loan Association, claiming to be creditors, to vote for said office of trustee, pursuant to a petition to review the ruling of the referee adverse to said Merchants National Bank of San Francisco in that particular, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.



WITNESS the Honorable M. T. DOOLING,  
United States District Judge for the Northern Dis-  
trict of California, this 26th day of November, 1915.

M. T. DOOLING,  
United States District Judge. [43]

Service of the foregoing Citation is hereby ad-  
mitted this 26 day of November, 1915,

CONTINENTAL BUILDING & LOAN  
ASSOCIATION,

By NAT SCHMULOWITZ,  
Its Attorney.

GEORGE W. MORDECAI,

In *pro. per.* and Appearing for JAMES McCUL-  
LOUGH.

J. S. HUTCHINSON,  
Attorney for Certain Persons Claiming to be Credi-  
tors.

R. G. HUNT,  
Attorney for Certain Persons Claiming to be Credi-  
tors.

WALTER D. MANSFIELD,  
Attorney for Certain Persons Claiming to be Credi-  
tors.

HUGO D. NEWHOUSE,  
Attorney for Certain Persons Claiming to be Credi-  
tors.

SIDNEY M. EHRMAN,  
Attorney for Certain Persons Claiming to be Credi-  
tors.

B. M. AIKINS,  
Attorney for Claimants Wilson, et al.

J. G. DE FOREST,

Attorney for Certain Persons Claiming to be Creditors.

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Attorney for Certain Persons Claiming to be Creditors.

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Attorney for Certain Persons Claiming to be Creditors. [44]

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[Endorsed]: Original. No. 9509. United States District Court Northern District of California First Division. In the Matter of Continental Building and Loan Association, in Bankruptcy. Citation on Appeal. Filed at 3 o'clock and 30 Min. P. M. Dec. 3, 1915. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [45]

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*In the United States District Court, in and for the Northern District of California, First Division.*

No. 9509.

In the Matter of CONTINENTAL BUILDING & LOAN ASSOCIATION,

In Bankruptcy.

**Affidavit of Service [of Citation on Appeal].**

United States of America,  
State of California,

Northern District of California,—ss.

Lester Alexander, being first duly sworn, deposes and says:

That he is over the age of eighteen years, a citizen of the United States and not a party to the above-

entitled action; that on the 26th day of November, 1915, at the city and county of San Francisco, State of California, he personally served the annexed citation upon W. C. Cavitt, attorney at law, who appears in the above-entitled action for certain persons claiming to be creditors, and whose office is at room No. 422, Rialto Building, in the city and county of San Francisco; that said W. C. Cavitt declined to admit personal service of said citation at the time and that affiant thereupon left with him a true copy of the annexed citation.

LESTER ALEXANDER.

Subscribed and sworn to before me this 3d day of December, 1915.

[Seal] CHARLES R. HOLTON,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Original. No. 9509. United States District Court, Northern District of California, First Division. In the Matter of Continental Building and Loan Association, in Bankruptcy. Citation and Affidavit of Service. Filed at 3 o'clock and 30 min. P. M. Dec. 3, 1915. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk.

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[Endorsed]: No. 2684. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Continental Building and Loan Association, Bankrupt. Merchants National Bank of San Francisco, a Corporation, Appellant, vs. The Continental Building and Loan Association, a Corporation et al., Appellees. Transcript of Record. Upon Appeal

from the United States District Court for the Northern District of California, First Division, and in Support of a Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise in Matter of Law, an Order of Said District Court.

Filed December 24, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.